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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,364	12/09/2003	C. Martin Smith	02-11429	4390
25189	7590	09/27/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,364

Applicant(s)

SMITH ET AL.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-32 and 35 is/are allowed.
- 6) ☒ Claim(s) 1-17, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

The "cross-references to related applications" (page 2) should be amended to indicate the relationship of this application to the parent application. It should be changed to: "This application is a continuation-in-part of application serial no. 10/002,365, filed November 1, 2001, now USP 6,666,925, which claims priority of provisional application 60/245,078, filed November 1, 2000."

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: #52 as per page 21, line 8. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because (1) #32 (the one in the right-most portion of fig 6 should be #33 instead (see page 13, line 3); and (2) there are two lead lines in fig 2b without associated reference numerals. Corrected drawing sheets in compliance

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with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: (1) "brush housing 6" (page 9, line 7) is incorrect; and (2) the status of the referenced application on page 22 should be updated.

Appropriate correction is required.

Comment re Claim 1

Fluid (claim 1, lines 7 and 14) should be "liquid" and "brush" should follow "cosmetic" (claim 1, line 14).

Claim Rejections - 35 USC § 112

4. Claims 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The "means for providing power to rotate the rotating cleaning means" (claim 33, lines 1-2) lacks antecedent. Similarly, "means for providing power" (claim 34, line 3) lacks antecedent. Applicant should review the claims for any additional informalities.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1,2,16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,666,925. Although the conflicting claims are not identical, they are not patentably distinct from each other because each of the limitations of the pending claim(s) is found and is anticipated by the claims of the prior patent, i.e. the tank, two

rotary brushes on a "frame", power source, access means and wherein the brushes do not touch each other.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3,6 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Zara et al (USP 5,701,626). The patent to Zara discloses a brush cleaning device (10) comprising a tank(12) for containing a cleaning liquid (column 3, lines 22-23), a brush frame (16) comprising a first and second cleaning means (30) with at least one of them being rotatable, means (50) for providing power, access means (20) for permitting an operator to insert a brush to be cleaned and further wherein the bristle portions of the cleaning means are not in contact with each other (see fig 2).

9. Claims 1-3,5,6,16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballman (USP 1,542,025). The patent to Ballman discloses a brush cleaning device comprising a tank (10) adapted to contain a cleaning fluid, brush frame (14) comprising first and second cleaning means (see figs 4,6 and 7) wherein at least one of them is rotary, means (28) for providing power, access means (35) and further wherein the cleaning means each have bristle portions that do not contact each other (again, see figs 4,6 and 7). With regard to claim 5, flaring out of the bristles is would

almost be expected. For that matter, figs 6 and 7 of Ballman see to show the free end of the bristles flaring out to some degree.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over EITHER Ballman (USP 1,542,025) OR Zara et al (USP 5,701,626) in view of Turco (USP 2,082,991). The patents to Ballman and Zara disclose the invention substantially as claimed with the exception of the rotary cleaning element having bristles arranged in a spiral. The patent Turco discloses rotary cleaning brushes (8,9) having bristles arranged in a spiral. One of ordinary skill would deem that the use various known bristle arrangements well known in the art would be used in either of the patents to Ballman or Zara.

12. Claims 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Ballman (USP 1,542,025) OR Zara et al (USP 5,701,626). Each of the prior art device discloses the invention substantially as claimed with the exception of the specific dimensions recited in claims 7-15. The particular dimensions set forth in the claims are merely disclosed as exemplary embodiments with no particular utility in and of themselves. As such, one of ordinary skill would deem it obvious choice of design to modify either of the prior art devices as such.

Allowable Subject Matter

13. Claims 18-32 and 35 are allowed.
14. Claims 33 and 34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited patents are each pertinent to article cleaning devices including some type of tank (except Wiksten, which is pertinent to the spiral cleaning members per se), with Wozniak-Rennek pertinent to the broad combination of rotary brushes with a fixed brush.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS